

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JUAN JAVIER RIVERA and
JOSE PABLO LEMUS, Individually and
on Behalf of Others Similarly Situated,

Plaintiffs,

v.

THE BRICKMAN GROUP, LTD.

Defendant.

Civil Action No. 05-1518

MEMORANDUM / ORDER

December 22, 2005

On November 10, 2005, Chief Magistrate Judge M. Faith Angell filed a Report and Recommendation in which she recommended that this court grant plaintiffs' "Motion to Certify a Plaintiff Representative Class of Persons Similarly Situated Pursuant to 29 U.S.C. § 216(b)" (Docket # 18). Plaintiffs filed objections to the Report and Recommendation, and defendant responded, opposing each request made in plaintiffs' objections. However, neither party has objected to Judge Angell's primary

recommendation – that the motion for conditional certification be granted – and that recommendation will therefore be adopted.

In their objections, plaintiffs request that this court: 1) order a six-month opt-in period; 2) approve plaintiffs' proposed class notice; 3) order defendant to produce all contact information for potential class members, including phone numbers, and authorize plaintiffs' counsel to "use all available means to disseminate notice," including phone calls to and/or meetings with potential class members; and 4) order defendant to assist in distribution of notice to potential class members.

The Report and Recommendation proposes an opt-in period of "at least three (3) months." Plaintiffs' request for a six-month opt-in period is not inconsistent with this recommendation, and I find it reasonable given that a large proportion of the putative class members reside in rural areas outside the United States and are relatively transient. I will therefore grant plaintiffs' request for a six-month opt-in period.

Judge Angell's proposed order attached to the Report and Recommendation directs the parties to confer regarding a form of notice to class members and submit a joint proposed notice to Judge Angell within ten days of the date of this order. Plaintiffs ask that I adopt their proposed notice now rather than ordering continued negotiations between the parties and submission of an agreed notice. I am not persuaded that an additional few days of negotiations will cause undue delay. Further, I would note that, being far more familiar than I am with the details of this case, Judge Angell is in a better

position to consider the form of notice. The procedure proposed by Judge Angell will be approved.

The balance of plaintiffs' objections relate to matters not raised with Judge Angell before issuance of the Report and Recommendation. Accordingly, I will not address them. Local Rule 72(IV)(c). They will be overruled, but without prejudice to their submission to Judge Angell.

For the foregoing reasons, it is therefore ORDERED that:

- 1) The Report and Recommendation is APPROVED AND ADOPTED;
- 2) Plaintiffs' "Motion to Certify a Plaintiff Representative Class of Persons Similarly Situated Pursuant to 29 U.S.C. § 216(b)" (Docket # 18) is GRANTED;
- 3) Counsel for the parties shall meet and confer as soon as practicable regarding the form, content, and translation of the notice to putative class members. A joint proposed notice shall be submitted to Chief Magistrate Judge Angell for consideration within ten (10) days of the date of this order.
- 4) Within twenty (20) days of the date of this order, defendant shall provide to plaintiffs' counsel a list of the names and last known addresses of all members of the class as defined in the notice. The addresses shall be provided in computer readable form if possible.
- 5) Class members shall have six (6) months from the time notice issues to file their consent to sue forms.

6) To the extent not sustained herein, plaintiffs' objections are OVERRULED.

BY THE COURT:

December 22, 2005

Pollak, J.